

JOHN E. BRANCH, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. **242**.

THE GLIDDEN COMPANY, DURKEE FAMOUS FOODS
DIVISION, a Foreign Corporation,
Petitioner,

vs.

OLGA ZDANOK, JOHN ZACHARCZYK, MARY A.
HACKETT, QUITMAN WILLIAMS and MARCELLE
KREISCHER, *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT.

**MOTION OF THE GEORGIA STATE CHAMBER OF
COMMERCE FOR LEAVE TO FILE BRIEF
AS AMICUS CURIAE**

and

**BRIEF OF GEORGIA STATE CHAMBER OF
COMMERCE AS AMICUS CURIAE.**

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The Georgia State Chamber of Commerce moves this Court for leave to file the accompanying brief in this case as *amicus curiae*. The consent of the attorney for the Petitioner herein has been obtained and filed with the Clerk, but the attorney for the Respondents herein refused to

consent to the filing of a brief by the Georgia State Chamber of Commerce as *amicus curiae*.

The Applicant has an interest in this case in that it represents hundreds of business and industrial establishments, many of which have collective bargaining agreements with labor organizations containing provisions similar to those which are the subject matter of this case. The construction of these provisions by the Court of Appeals is adverse to the interests of the business and industrial establishments represented by Applicant. Furthermore, the decision of the Court of Appeals has created uncertainties and confusion as to the legal effect of certain provisions in all collective bargaining agreements.

Applicant has a further interest in this case in that it is actively engaged in a broad industrial development program designed to encourage and promote the location of new manufacturing plants and industrial establishments within the State of Georgia. The decision of the Court of Appeals has a very damaging effect upon said industrial development program.

It is the belief of the Applicant that the far-reaching effects of the decision in this case both upon the interests of Applicant's members and its industrial development program, as well as upon the economy in general, will not adequately be presented by the Parties. Such facts should be taken into consideration by this Court inasmuch as this case is an important step in the development of a body of Federal substantive law in the labor relations field.

Since the proceeding draws into question the constitutionality of the Act of July 28, 1953, 67 Stat. 226, Title 28 U.S.C., Section 171, an Act of Congress affecting the public interest, and neither the United States nor any agency,

officer or employee thereof is a party, it is noted that Title 28, U.S.C., Section 2403, may be applicable.

No Court of the United States as defined by Title 28, U.S.C., Section 451, has, pursuant to Title 28, U.S.C., Section 2403, certified to the Attorney General the fact that the constitutionality of such Act of the Congress has been drawn in question. In accordance with the rules of this Court the Solicitor General of the United States is being served with a copy of this Motion and accompanying Brief.

Respectfully submitted,

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STATEMENT.

This Brief is filed on behalf of the Georgia State Chamber of Commerce, an association of business and industrial establishments located in the State of Georgia.

QUESTIONS PRESENTED.

The Georgia State Chamber of Commerce hereby adopts by reference the questions presented by the Petitioner in its Petition for Writ of *Certiorari*.

ARGUMENT.

I. The decision of the Court of Appeals is contrary to the public interest.

The Court of Appeals ruled, with the Chief Judge dissenting, that seniority provisions in a collective bargaining contract transcend the term of the contract and remain valid and binding after the termination of both the contract and the employment relationship.

The economy of the United States depends upon industrial expansion and modernization. With the population growth rate and the increasing pressure from foreign competition our very survival is directly related to our ability to keep pace through research, development and modernized industrial facilities. The public interest demands an ever improving, an ever expanding economy.

The unlimited potential liabilities imposed upon industry by the decision in this case are so great as to be a detriment to expansion. If seniority rights transcend the term of the contract and carry beyond both the employment relationship and the particular plant installation then they have no limits whatsoever. A realization of the potential liabilities in any expansion or modernization program because of the unlimited seniority rights is enough, in itself, to dissuade even the most progressive minded businessman.

There are many areas in the United States which have yet to develop their industrial potential. There are wide variances in the economies of our states. The less industrialized states are by and large at the lower strata of our economy. Similarly, some of the industrial states are suffering economically because of a need to diversify their industry. Many organizations throughout the country are working feverishly to promote the industrialization of their areas. The Georgia State Chamber of Commerce has worked toward this end for years. It has just recently launched a broad-scale program designed to encourage industry to locate plants and facilities within the State of Georgia. The results of such a program will inure not only to the benefit of the people of Georgia but to the country as well. The decision of the Court of Appeals in this case erects an insurmountable roadblock in the path of all industrial development programs.

II. The decision of the Court of Appeals is contrary to the interest of the working man.

The decision of the Court of Appeals appears to be motivated by a desire to reach a humane result insofar as the Respondents are concerned. The ultimate result of the principles laid down in this decision can only be detrimental to the very people it seeks to help. If industry is prevented from modernizing and expanding by impossible obstacles and unpredictable liabilities such as this decision creates then the new jobs necessary to accommodate the growing work force will not materialize. In the long term the working man who depends upon those jobs will suffer along with industry and ultimately the country as a whole. Unemployment already is one of our major national problems. Any further hindrance to industrial expansion and modernization will enlarge and complicate the unemployment problem to even greater proportions.

III. The decision of the Court of Appeals is in conflict with the Federal labor policy.

This decision is a major step in the development of a body of Federal substantive law in the labor-management field. It obviously is a departure from the basic principles governing contracts generally. If there are to be such departures then certainly there should be strong justification. Factors such as those heretofore discussed should be considered. Likewise the over-all policy found in the Federal labor legislation should be taken into consideration. That policy basically is designed to promote industrial peace.

The decision of the Court of Appeals in this case is contrary to the Federal labor policy in that it promotes discord where none now exists. Where the issue of seniority might have been one of major dispute in the early days of labor movement it has become routine in recent years. Labor and management now generally recognize the principle of seniority and the negotiation usually concerns itself with the type system to be utilized. But the decision of the Court of Appeals throws such a drastically new light upon seniority rights, not to mention the vast uncertainties and potential liabilities, that the issue must now be whether management can afford to agree to seniority at all. Needless to say, this opens up an area of labor-management combat which at the present time is relatively peaceful.

Most collective bargaining agreements make provision for seniority rights. It generally has been considered that these rights were confined to the plant facility (unless otherwise provided), the term of the contract or the term of the employment relationship. All of the cases dealing with seniority rights cited by the Petitioner, and incorporated here by reference, are based upon this basic

premise. The decision of the Court of Appeals in this case opens up areas of controversy over the far-reaching effects of seniority rights heretofore unimaginable. There are no limits as to time or place. What would happen in the case of a multi-plant employer who simply discontinues the use of a plant, without replacement, or who consolidates two plants, or who moves a portion of an operation to another plant? Suppose the employees decided to revoke the authority of the bargaining agent, which they have a right to do. Suppose a company replaced two or three plants with one new plant. The potential liabilities and complications under the governing principles of this decision surpass even the wildest imagination. There is no way it can be reconciled with reason, justice or logic. The effect of this decision if allowed to stand will be to plunge the entire labor-management field into utter confusion, chaos, strife and frustration.

CONCLUSION.

For the foregoing reasons the Petition for Writ of Certiorari should be granted.

Dated July , 1961.

Respectfully submitted,

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